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Officials widen release offer to US banks

By Shahien Nasiripour in New York

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US state and federal officials plan to give the country's largest mortgage servicers wider protection against legal claims in exchange for refinancing help for existing borrowers, as talks on a \$25bn settlement of alleged foreclosure improprieties advance.

The proposed agreement would settle allegations that [Bank of America](#),

[JPMorgan Chase](#), [Wells Fargo](#), [Citigroup](#) and Ally Financial engaged in faulty mortgage practices, including employing so-called "robo-signers" – agents who processed foreclosure filings en masse without examining the underlying paperwork – that abused homeowners' rights and led to wrongful home seizures. The banks declined to comment.

Revelations last year that the largest mortgage servicers used robo-signers to repossess homes led all 50 state attorneys-general to launch a joint probe with the Obama administration into mortgage and foreclosure practices.

The Obama administration hoped to strike a quick settlement agreement with the banks in exchange for aid to distressed borrowers. However, the talks have been beset by infighting among the states and the banks, and some states

have dropped out of the process.

Under the proposed deal, the banks would pay billions of dollars into a federal programme that would reduce debt levels and mortgage payments for troubled borrowers. It would also fund other schemes, such as distressed home sales in which outstanding debts are largely forgiven, payment forbearance for unemployed borrowers, the tearing down of dilapidated and vacant homes and transition assistance for homeowners to move into rented accommodations, people familiar with the matter said. About 80 per cent of the penalties would be earmarked for the federal fund.

A new element of the deal is a proposal to set aside \$2bn to refinance current

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borrowers paying above-market interest rates into cheaper loans, people familiar with the talks said, following a conference call held on Wednesday involving representatives of all 50 states.

Borrowers who are underwater – meaning they owe more on their mortgage than their house is worth – would be targeted in the hope that if their monthly payments were reduced they would be less likely to default. The pool of eligible homeowners would be limited to those whose homes are owned by the banks and who are not behind in making their payments.

About 150,000 borrowers could benefit from the refinancings, as the vast majority of US home loans are owned by investors and government-controlled mortgage giants [Fannie Mae](#) and [Freddie Mac](#). By comparison, nearly 11m US borrowers are underwater, according to CoreLogic, a data provider. The average underwater homeowner owes \$258,000 on his mortgage.

In return for getting the banks to agree to the refinancing scheme and give up higher interest income, the states would release the banks from civil claims related to loan originations, the stage at which many homeowners say they were duped by unscrupulous lenders.

Last month, state prosecutors proposed to effectively release the five big lenders from [legal liability for allegedly wrongful securitisation practices](#) related to the banks' treatment of loan documents. Taken together, the release from liability over poor origination, securitisation, servicing and foreclosure practices could amount to an effective grant of immunity for the banks from civil claims, people familiar with the matter said.

“A release of origination claims precludes meaningful action on securitisation,” said Adam Levitin of Georgetown University Law Center. “It’s hard to separate them.”

State officials pressing for quick resolution to the talks and people familiar with the banks' position disagree. They argue that state legal officers would still be able to pursue securities fraud claims like violations of representations and warranties to investors and related charges.

The release from liability stemming from faulty origination practices represents a retreat by state attorneys-general, led by Iowa and Illinois, who for months have insisted that a deal would release the banks only from claims related to defective servicing and foreclosure practices like “robosigning”.

Katherine Porter, a mortgage and debt expert at the University of California-Irvine's law school, said she doubted whether a bank could successfully use a release from liability over origination claims to stop a securities-fraud suit.

A few states are actively pursuing securitisation lawsuits against the biggest US banks. New York attorney-general Eric Schneiderman, Delaware's Beau Biden, Martha Coakley of Massachusetts and Catherine Cortez Masto of Nevada are among a group of state legal officers probing allegedly wrongful securitisation matters.

Ms Cortez Masto last month charged Bank of America's beleaguered Countrywide unit with failing to properly transfer mortgages into the trusts that issued securities to investors and for fraudulently pursuing home seizures.



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In a separate suit, Mr Schneiderman indicated his office reached similar findings.

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